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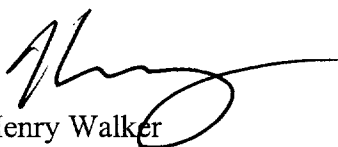
Re: *Proceeding for the Purpose of Addressing Competitive Effects of Contract  
Service Arrangements Filed by BellSouth Telecommunications, Inc., in  
Tennessee*  
Docket No. 98-00559

Dear David:

Enclosed for filing are the original and thirteen copies of a Motion to Compel BellSouth to Answer Interrogatories from SECCA, NEXTLINK and e.spire in the above-captioned proceeding. At 12 noon today, a copy of the Motion was sent via facsimile to Guy Hicks, counsel for BellSouth. Other service copies have been sent by regular mail.

Very truly yours,

BOULT, CUMMINGS, CONNERS & BERRY, PLC

By:   
Henry Walker

HW/nl  
cc: Parties

BEFORE THE TENNESSEE REGULATORY AUTHORITY

Nashville, Tennessee

Re: *Proceeding for the Purpose of Addressing Competitive Effects of Contract Service Arrangements Filed by BellSouth Telecommunications, Inc., in Tennessee*  
Docket No. 98-00559

MOTION TO COMPEL BELL SOUTH TO ANSWER INTERROGATORIES FROM  
SECCA, NEXTLINK, AND e.spire

NEXTLINK, Tennessee, Inc. ("NEXTLINK"), e.spire, and the Southeast Competitive Carriers Association ("SECCA"), hereafter, the "intervenors," move to compel answers to interrogatories from BellSouth Telecommunications, Inc. ("BellSouth") in the above-captioned docket.

I. The intervenors have asked BellSouth several, specific questions concerning CSAs filed with the TRA since January 1, 1994. In response, the company has made available copies of these CSAs at BellSouth's Nashville office.

The intervenors also asked specifically for a comparison of the rates and terms provided under the CSAs and the rates and terms offered in BellSouth's tariffs. Question 4(d), First Set of Interrogatories. BellSouth declined to make the comparison but directed the intervenors to BellSouth's publicly available tariffs.

BellSouth's response is inadequate. Because of the complexity and volume of BellSouth's tariffs, it is virtually impossible for anyone outside the company to determine precisely which tariffs apply to a particular customer and to determine, on an element-by-element basis, the tariffed price of the service being offered under a CSA.<sup>1</sup>

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<sup>1</sup> BellSouth itself must have prepared such an analysis for each CSA before BellSouth offered the CSA to a customer. BellSouth's response does not deny that such analysis exists.

Unless the TRA is willing to require BellSouth to prepare such a comparison, or produce one that has already been prepared, the TRA and the intervenors will not, as a practical matter, be able to determine how much of a discount BellSouth is offering and will not be able to determine whether BellSouth is offering comparable discounts to similarly situated customers.

If the TRA believes it is unnecessary and burdensome for BellSouth to produce such a comparison for all CSAs since 1994, the TRA could select a more recent time period, *i.e.*, since January 1, 1998.

II. BellSouth has referred to identify “each service element that is provided below its long run incremental costs as computed in the cost studies used by BellSouth to support the CSA findings.” BellSouth answers that these issues have been raised in docket 97-01105 and that the company “has already provided the Consumer Advocate Division extensive information” as to whether CSAs cover the incremental cost of providing service.

Having provided the information to the CAD, there is no reason why BellSouth should not make that information available to the intervenors in this docket. This issue -- whether CSAs are offered below cost -- goes to the heart of the main issue in this proceeding, *i.e.*, whether the CSA terms offered by BellSouth are anticompetitive. That issue must be fully explored in this proceeding if this investigation is to accomplish its purpose.

The CAD’s investigation has apparently bogged down; otherwise, it would not have been necessary for the TRA to open its own investigation into the “competitive effects” of BellSouth’s CSAs. Presumably, the TRA envisioned that the intervenors would work together to accomplish what neither the CAD, nor any single party, can readily do alone. For that

cooperation to occur, the other intervenors must have access to whatever information has been provided in Docket 97-01105 and, if necessary, must be able to compel BellSouth to answer additional questions concerning these cost issues.

III. The intervenors ask that BellSouth be required to produce "property management contracts" which are presently offered in other BellSouth states and have been previously offered in Tennessee. The Administrative Judge has ruled that such contracts are outside the scope of this docket. That ruling, however, is based in part on the Administrative Judge's acceptance of BellSouth's representation that such contracts "are not entered into with a customer for the purchase of tariffed services."

As discussed during the hearing on BellSouth's 271 application, these property management contracts are typically agreements between BellSouth and a building manager. Under the agreement, the manager becomes, in effect, an exclusive sales agent for BellSouth, supplying information about building tenants to BellSouth and recommending BellSouth services over the services of competitors. In exchange, the manager is eligible to receive service from BellSouth at a reduced price. The more tenants use BellSouth's service, the greater the manager's discount. In other words, these are, in fact, contracts between BellSouth and an end user and these contracts offset the price of tariffed services purchased by the manager.

These secret contracts are clearly anticompetitive. Although BellSouth states that such contracts are not now being offered in Tennessee, it is important to ensure that such contracts will not be offered in Tennessee in the future. Since BellSouth offers these contracts in other states, there is no reason to believe they will not be offered here whenever BellSouth chooses

to do so. For that reason, the TRA, must at a minimum, require BellSouth to provide a sample of such a contract, disclose when such contracts were offered in Tennessee, list the states where such contracts are available, and explain the circumstances under which BellSouth would offer these contracts in this state.

If the TRA intends to prohibit BellSouth from offering such contracts, at least without TRA approval, the agency must require BellSouth to address these questions.

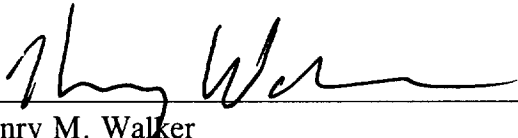
IV. In question 5, of the Second Set of Interrogatories, the intervenors ask specifically for certain documents supporting "each CSA submitted to the TRA in 1998." BellSouth's answer states that these documents are "available for inspection" at BellSouth's Atlanta offices.

These documents are necessary to determine whether the CSAs are consistent with the TRA's rules on special contracts. *See* TRA Rule 1220-4-2-.55(g). Furthermore, under Rule 1220-4-2-.04, such information must be made available in Tennessee, not Georgia. BellSouth should be directed to make these documents available in Nashville as BellSouth has done with the CSAs themselves.

Respectfully submitted,

BOULT, CUMMINGS, CONNERS & BERRY, PLC

By: \_\_\_\_\_

  
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*Counsel for NEXTLINK, SECCA, and e.spire*

### CERTIFICATE OF SERVICE

I hereby certify that on the 22 day of February, 1999, a copy of the foregoing document was served on the parties of record, via hand-delivery, overnight delivery or U.S. Mail, postage prepaid, addressed as follows:

Dana Shaffer, Esq.

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